REMARKS

In this response to the above identified Office Action, Applicants respectfully request

reconsideration in view of the above amendment and the following remarks. Applicants amend

claims 1-3, 5, 7-9, 28-30, 32 and 34-36. No claims have been cancelled. Claim 43 has been

added. Entry is requested. Accordingly, claims 1-43 are pending in the application.

I.   Claims Rejected Under 35 U.S.C. § 112

Claims 1-11 and 28-38 stand rejected under 35 U.S.C. § 112, first paragraph, as allegedly

failing to comply with the written description requirement. Specifically, the Examiner has

rejected the claims for including the elements "wherein the receiving, the determining, the

clearing and the synchronizing are performed within a further process" or "wherein the detecting,

the restarting, the restoring, the synchronizing and the clearing are performed within a further

process." Applicants have amended these claims to remove the language identified by the

Examiner. Accordingly, reconsideration and withdrawal of the written description requirement

rejection are requested.

II.   Objections to the Claims

Claims 3, 7 and 34 have been objected to for allegedly containing informalities.

Applicants have amended claim 3 as suggested by the Examiner. Claims 7 and 34 have been

amended to remove the language in question. Accordingly, reconsideration and withdrawal of

the objections to these claims are requested.

III.   Claims Rejected Under 35 U.S.C. § 103

Claims 1-11 and 28-42 stand rejected under 35 U.S.C. § 103 as allegedly being unpatentable over U.S. Patent No. 6,393,582 issued to Klecka et al. (hereinafter "Klecka") in view of what the Examiner labels as Applicant Admitted Prior Art (hereinafter "AAPA"). Applicants respectfully disagree for the following reasons.

To establish a *prima facie* case of obviousness the Examiner must show that the cited references, combined, teach or suggest each of the elements of the claims. Further, the proposed amendment must not alter the fundamental operating principle of the primary reference. In regard to claims 1, 7, 28 and 34 these claims include the elements of "receiving by a second network process a first set of data from a first network process" and "synchronizing by the second network process the first set of data with a second set of data if the time period does not expire, the second set of data received from the first network process after the first network process restarts."

As an initial matter, Applicants believe that Klecka fails to teach "a network process," rather, Klecka teaches redundant processors including a master processor and a shadow processor. One of ordinary skill in the art would not confuse such a device with a network process. The Examiner's rejection of these claims appears to equate the master and slave processors with the first and second network processes recited in these claims. However, even under this interpretation the master and slave processors do not have the functionality recited in these claims.

In regard to "receiving by a second network process a first set of data from a first process network process," the Examiner states that col. 1 line 60-col. 2 line 3, col. 2 lines 12-31, and col. 6 lines 22-36 teach "receiving interrupt divergences status signal and the present processor

004906.P078   13   09/872.920

state." See page 4 of the Final Office Action. Thus, the Examiner appears to be equating a divergence status signal and processor state with a first data set. However, the Applicants have reviewed the cited sections of Klecka, but were unable to discern any part therein that teaches a second network process receiving a first set of data from a first network process that includes a present processor state. Rather, Klecka teaches that processor logs and status are maintained by the MCR and ICR not the master processing unit or the shadow processor unit. See col. 6 lines 37-61 of Klecka. The MCR and ICR are also the components that generate the divergence status signal, not the master processor unit or the shadow processor unit which the Examiner equates with network processes. Thus, Klecka does not teach "receiving the first set of data by a second network process from a first network process."

In regard to "synchronizing by the second network processor a first set of data with a second set of data if the time period does not expire, the second set of data received from the first network process after the first network process restarts," the Examiner asserts that Klecka teaches "the present processor state is saved to memory, the processor is then reset, re-initialized and reloaded with the prior saved state." See page 4 of the Final Office Action. This does not read on the recited claim language. Synchronizing takes place at a network process that is not restarting but rather is synchronizing data from a restarting network process including synchronizing data that was received both before and after the restart. The cited sections and arguments of the Examiner are related to the actions of the restarting processor. Thus, Klecka does not teach these elements of claim 1.

The Examiner has not relied upon and the Applicants have been able to discern any part of the AAPA that teaches these elements of claim 1. Thus, Klecka in view of AAPA does not teach or suggest each of the elements of these claims.

Further, the Examiner has improperly combined these references. The <u>AAPA</u> relates to the operation of network elements that are running multiple processes to maintain network communication. See paragraph [0002] of <u>AAPA</u>. In contrast, <u>Klecka</u> teaches error-checking processor units operating in close synchrony and sharing a common memory checker and IO checker. See Abstract and Figure 1 of <u>Klecka</u>. The elements of the <u>AAPA</u> with which the Examiner seeks to combine and modify <u>Klecka</u> require the basic operating principles of <u>Klecka</u> be changed from a dual processor unit relying on an MCR and an ICR for error checking to independent network processors interacting with one another through inter-process communication and heart beat messages. Thus, one of ordinary skill in the art would not think to combine <u>AAPA</u> with <u>Klecka</u> and such a combination requires that a fundamental operating principle of <u>Klecka</u> be modified. Accordingly, reconsideration and withdrawal of the obviousness rejection of claim 1 are requested.

Claims 7, 28, 34 and 39 include similar elements to claim 1. Thus, for the reasons mentioned above in regard to claim 1, these claims are not obvious over <u>Klecka</u> in view of <u>AAPA</u>. Accordingly, reconsideration and withdrawal of the obviousness rejection of these claims are requested. In regard to claims 2-6, 8-11, 29-33, 35-38 and 40-42, these claims depend from independent claims 1, 7, 28 34 and 39, respectively, and incorporate the limitations thereof. Thus, at least for the reasons mentioned above in regard to the independent claims these claims are not obvious over <u>Klecka</u> in view of <u>AAPA</u>. Accordingly, reconsideration and withdrawal of the obviousness rejection of these claims is requested.

Claims 12-25 stand rejected under 35 U.S.C. § 103 as being unpatentable over U.S. Patent No. 6,694,450 issued to Kidder et al., (hereinafter "<u>*Kidder*</u>") in view of U.S. Patent No.

6,049,838 issued to Miller, et al. (hereinafter "*Miller*"). Applicants respectfully disagree for the following reasons.

In regard to claims 12, 16, 20 and 24, these claims include the elements of "the second network process to synchronize for itself the first set of data with a second set of data generated by the first network process before restarting upon determining a time period has not expired, the time period beginning when the first network process dies" or similar elements. The Examiner has admitted that Kidder fails to teach these elements of claims 12, 16, 20 and 24. Instead, the Examiner relies on Miller for teaching these elements of the claims. However, the Applicants have reviewed the cited sections of Miller that the Examiner alleges teaches these element of claims 12, 16, 20 and 24, but have been unable to discern any part therein that appears to even discuss these elements. Rather, the sections of Miller that are cited discuss the re-establishment of communication with an object that has failed and restarted using checkpoint information and receiving proxies and transports which support communication between the object and other objects. Applicants have been unable to discern any part of the cited sections that relates to other processes utilizing data from the failed process and synchronizing with data received from the failed process when the process has restarted prior to the expiration of a timer.

The closest discussion in the cited sections is in col. 13 lines 7-17, which discusses use of an expiration date tracked by a register class. However, it is unclear to the Applicants what the Examiner is attempting to equate with the first of set of data or the second set of data that are being synchronized. Applicants respectfully request that if the Examiner maintains this rejection that the Examiner clarify under what interpretation these sections of Miller teach or suggest the recited language of the independent claims. Thus, Applicants believe the Examiner has failed to provide a *prima facie* case of obviousness for claims 12, 16, 20 and 24. Accordingly,

004906.P078   16   09/872,920

reconsideration and withdrawal of the obviousness rejections of claims 12, 16, 20 and 24 are requested.

In regard to claims 13-15, 17-19, 21-23 and 25. These claims depend from independent claims 1, 16, 20 and 24, respectively, and incorporate the limitations thereof. Thus, at least for the reasons mentioned above in regard to the independent claims, these claims are not obvious over Kidder in view of Miller. Accordingly, reconsideration and withdrawal of the obviousness rejections of these claims are requested.

Claims 26 and 27 stand rejected under 35 U.S.C. § 103 as being unpatentable over Kidder in view of Miller in further view of AAPA. These claims depend from independent claim 24 and incorporate the limitations thereof. Thus, at least for the reasons mentioned above in regard to independent claim 24, Kidder in view Miller does not teach or suggest each of the elements of these claims. Further, the Examiner has not relied upon the AAPA for curing these defects of Kidder and Miller. Therefore, the Applicants believe that the Examiner has failed to establish a *prima facie* case of obviousness for claims 26 and 27 based on Kidder in view of Miller and in further view of AAPA. Accordingly, reconsideration and withdrawal of the obviousness rejection of claims 26 and 27 are requested.

IV. New Claims

Applicants have added claim 43. This claims includes elements of "clearing a stale indicator if the timer has not expired at the second process in response to notification of first process revival." Applicants believe that the cited references fail to teach or suggest these elements of claim 43. Accordingly, Applicants believe this claim includes allowable subject matter.

CONCLUSION

In view of the foregoing, it is believed that all claims now pending, namely claims 1-43, patentably define the subject invention over the prior art of record, and are in condition for allowance and such action is earnestly solicited at the earliest possible date. If the Examiner believes that a telephone conference would be useful in moving the application forward to allowance, the Examiner is encouraged to contact the undersigned at (310) 207 3800.
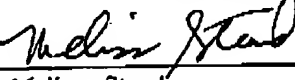
Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Dated: _5/22_____, 2006

Jonathan S. Miller   Reg. No. 48,534

CERTIFICATE OF FACSIMILE TRANSMISSION
I hereby certify that this paper is being facsimile transmitted to the Patent and Trademark Office on the date shown below.

Melissa Stead   May 22, 2006
                                        Date

004906.P078   18   09/872,920